

NORMAN CHODOSH

IBLA 81-989

Decided December 14, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease offer. U-45021.

Vacated and referred for hearing.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Under the regulations in effect prior to June 16, 1980, where a drawing entry card bears a facsimile of the offeror's signature which was affixed by a printing service acting as an amanuensis, and where no agency statement was filed, the validity of the offer may turn on whether the printer was acting as an amanuensis for the offeror or for his agent, since an agency statement is required only where the agent (or his instrumentality) affixes the facsimile of the offeror's signature on the drawing entry card. Where the record is unclear as to this fact, the matter will be referred to the Hearings Division for a hearing.

APPEARANCES: Craig J. Zicari, Esq., Rochester, New York, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On December 26, 1979, Norman Chodosh filed a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel UT 49 with the Utah State Office, Bureau of Land Management (BLM).

This DEC bore a facsimile of Chodosh's signature and the address of Upstate Oil Advisory Services, Inc. (Upstate), an oil and gas lease offer filing service.

On February 9, 1980, BLM required Chodosh to submit additional evidence, including a copy of any service or brokerage arrangement between him and any other party. BLM also directed him to disclose who applied the facsimile signature to his DEC, and how it was applied. On February 21, 1980, Chodosh complied, filing a copy of his service agreement with Upstate and the following statement concerning the affixing of the facsimile signature on the DEC:

At my direction, the facsimile signature was placed on the entry card by the Rochester Graphics Center who performed mechanical tasks only and it was my intent at the time the offer was signed that the facsimile signature be my own signature and that they or no one else has any beneficial interest in the entry.

On July 27, 1981, 1/ BLM issued a decision rejecting Chodosh's offer, holding that Upstate was his "agent" and had prepared the offer for him, so that, it held, the agency statement requirements of 43 CFR 3102.6-1 applied. BLM concluded that since no agency statements were filed by Chodosh or Upstate, his offer must be rejected. Chodosh appealed.

[1] BLM improperly stated the rule governing the filing of agency statements under 43 CFR 3102.6-1 (1979), 2/ and we must vacate its decision. Even though the service agreement between Chodosh and Upstate shows clearly that Upstate formulated appellant's offer and was therefor his "agent" (Robert C. Leary, 27 IBLA 296 (1976)), this fact alone does not trigger the agency statement requirement. No agency statement was required to be filed unless Upstate or its agent "signed" the DEC on appellant's behalf, either manually or mechanically. 43 CFR 3102.6-1(a)(2) (1979); Federal Resources Corp., 48 IBLA 138 (1980); D.E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), aff'd, Runnells v. Andrus, No. C77-268 (D. Utah Feb. 19, 1980).

1/ The processing of this offer was presumably delayed because of the Department's general investigation into fraudulent practices in the Federal simultaneous oil and gas leasing system.

2/ Since the DEC was filed prior to June 16, 1980, the effective date of new regulations governing simultaneous oil and gas leasing, published in the Federal Register on May 23, 1980, 45 FR 35156, the provisions of 43 CFR Part 3100 (1979) apply here.

The record shows that neither appellant nor Upstate physically affixed the facsimile signature, and that the Rochester Graphics Center (Rochester) did so by mechanically printing it on appellant's DEC. It is evident that Rochester had no discretion in the matter and was therefore acting as a mere instrumentality, or "amanuensis," in printing appellant's facsimile signature. However, the present record does not disclose who directed Rochester to do the printing. In other words, it is not clear whose amanuensis Rochester was.

The question of the validity of appellant's offer appears to turn on this fact. If appellant personally directed Rochester to print his signature on his DEC, his offer should not be disqualified for lack of an agency statement, since such a statement need not be filed where the DEC is signed by the offeror's amanuensis rather than by his agent. John W. Bierlein, 53 IBLA 48 (1981); Evelyn Chambers, 27 IBLA 317, 83 I.D. 540 (1976). On the other hand, if Upstate ordered Rochester to do the printing, an agency statement would have been required since Upstate (appellant's agent) would have signed the DEC by means of an amanuensis, and 43 CFR 3102.6-1(a)(2) (1979) required the filing of an agency statement where an agent signed the DEC on behalf of the principal. The agency statement requirement, we hold, properly applies where an agent affixes the facsimile of the offeror's signature by the instrumentality of a printer.

Appellant's statement, set out above, indicates that the facsimile signature was placed on his DEC "at [his] direction." However, the record contains another DEC filed by another client of Upstate, and, significantly, this DEC bears a facsimile signature which was clearly reproduced in the same manner as appellant's. This commonality suggests that Upstate may have dealt with Rochester on behalf of all of its clients.

This fact creates enough doubt to justify referring the matter to an Administrative Law Judge for a hearing on this factual question. The Judge should examine the dealings which led to Rochester's printing of appellant's name on his DEC, should determine whether it was appellant or Upstate who dealt directly with Rochester, and should issue a decision based on his findings. In the absence of further appeal to this Board, his decision will be final for the Department.

We also note that page two of the service agreement, a copy of which was filed by Chodosh at BLM's request in February 1980, appears to have been modified in several places to change the name of the filing service to "Upstate," probably from "Eastern," as evinced by one reference to the latter that remains unchanged. Since such alterations raise the possibility that the original service agreement was modified

before it was copied and sent to BLM, appellant should also be asked to explain these alterations at the hearing. 3/

Bernard V. Parrette
Chief Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ In addition, attached to appellant's statement of reasons as Exhibit H is a letter dated Sept. 25, 1980, from BLM seeking further information from appellant. Appellant's answers appear on the letter. Appellant indicated that he had not filled in the information on the DEC; it had been done by "Eastern Investors Geo. Serv. Inc."

